

**DRAFT SUPPLEMENT TO THE ENVIRONMENTAL
ASSESSMENT/FINDING OF NO SIGNIFICANT IMPACT AND
REGULATORY IMPACT REVIEW FOR SEA TURTLE
CONSERVATION MEASURES FOR THE ATLANTIC SEA
SCALLOP DREDGE FISHERY**

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Review/Regulatory Flexibility Act Analysis of Sea Turtle Conservation Measures
for the Atlantic Sea Scallop Dredge Fishery**

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ATTACHMENT 1: FINAL ENVIRONMENTAL ASSESSMENT AND REGULATORY IMPACT REVIEW/REGULATORY FLEXIBILITY ACT ANALYSIS OF SEA TURTLE CONSERVATION MEASURES FOR THE ATLANTIC SEA SCALLOP DREDGE FISHERY

Acronyms

APA	Administrative Procedures Act
CFR	Code of Federal Regulations
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
ESA	Endangered Species Act
FONSI	Finding of No Significant Impact
FR	Federal Register
FSB	Fisheries Sampling Branch
MMPA	Marine Mammal Protection Act
NEFSC	Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
RFA	Regulatory Flexibility Act Analysis
RIR	Regulatory Impact Review
USFWS	United States Fish and Wildlife Service

1. BACKGROUND

NOAA's National Marine Fisheries Service (NMFS) has prepared this supplemental analysis to evaluate the potential impacts from minor modifications to the existing requirements (73 FR 18984, April 8, 2008) related to the use of chain-mat modified dredge gear in the Atlantic sea scallop dredge fishery. This Environmental Assessment (EA) supplements the "Final Environmental Assessment and Regulatory Impact Review/Regulatory Flexibility Act Analysis of Sea Turtle Conservation Measures for the Atlantic Sea Scallop Dredge Fishery" (NMFS 2008a). In accordance with the National Environmental Policy Act (NEPA), NMFS previously evaluated the potential impacts associated with the implementation of the current chain mat requirements in the attached EA. The conclusion reached in the EA was that the action would not significantly impact the quality of the human environment, and that all beneficial and adverse impacts of the action were analyzed and a conclusion of no significant impacts was found (NMFS 2008a). This supplement to that EA presents effects information on the physical, biological, habitat, and socio-economic ecosystem components that would result from the minor modifications described herein. This document is intended to be utilized in conjunction with the attached EA.

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for the breeding populations of green turtles in Florida and on the Pacific coast of Mexico that are listed as endangered. Kemp's ridley, hawksbill, loggerhead, and green sea turtles are hard-shelled sea turtles.

Under the ESA and its implementing regulations, taking sea turtles under NMFS's jurisdiction, even incidentally, is prohibited, with exceptions identified at 50 CFR 223.206. The incidental take, both lethal and non-lethal, of loggerhead, Kemp's ridley, and unidentified hard-shelled sea turtles as a result of scallop dredging has been observed in the Atlantic sea scallop fishery (NMFS Northeast Fisheries Science Center [NEFSC] Fisheries Sampling Branch [FSB], Observer Database). In addition, one non-lethal take of a green sea turtle has been observed in this fishery (NEFSC FSB, Observer Database) and one unconfirmed take of a leatherback sea turtle was reported during the experimental fishery to test the chain-mat modified gear (DuPaul *et al.* 2004). Several assessments of sea turtle bycatch in the mid-Atlantic sea scallop dredge fishery have been completed by the NEFSC. An estimated 749 loggerhead sea turtles were captured during the 2003 fishing year (Murray 2004), an estimated 180 during the 2004 fishing year (Murray 2005), and zero during the 2005 fishing year (Murray 2007). It should be noted that while there were no takes observed while observers were on watch during the 2005-fishing year, NMFS observers did document three takes while off-watch. In the most recent Biological Opinion on the Atlantic sea scallop fishery management plan

(NMFS 2008b), NMFS anticipates the take of up to 929 loggerhead sea turtles biennially in scallop dredge gear as a result of the continued operation of the fishery. NMFS anticipates that up to, but most likely less than, 595 of the anticipated 929 loggerhead sea turtles captured biennially in the scallop dredge fishery will suffer injuries to the extent that they will die, cease to function in other respects (eventually leading to death), or fail to reproduce (NMFS 2008b). In addition, NMFS anticipates the annual take of up to 1 leatherback sea turtle (non-lethal), 2 Kemp's ridley sea turtles (lethal or non-lethal), and 2 green sea turtles (lethal or non-lethal) in scallop dredge gear (NMFS 2008b). Additional information on the take of sea turtles in the Atlantic sea scallop dredge fishery can be found in Section 2.1 of the attached EA.

Sea turtles caught in scallop dredge gear often suffer injuries. The most commonly observed injury is damage to the carapace. The exact causes of these injuries are unknown, but the most likely causes appear to be from being struck by the dredge (during a tow or upon emptying of the dredge bag on deck), crushed by debris (e.g., large rocks) that collects in the dredge bag, or as a result of a fall during hauling of the dredge. The use of chain-mat modified dredge gear has been required in the Atlantic sea scallop dredge fishery since 2006 (71 FR 50361, August 25, 2006). Under the current requirements (73 FR 18984, April 8, 2008), vessels entering waters south of 41° 9.0' N latitude from May 1 through November 30 each year must have a chain mat on each dredge. The chain mat is a grid of horizontal and vertical chains hung over the mouth of the dredge bag to prevent sea turtles from being captured in the bag, which may result in injury and/or mortality, as discussed above. A full description of the chain mat and the benefits to sea turtles can be found in the proposed/final rules implementing the regulations (72 FR 63537, November 9, 2007; 73 FR 18984, April 8, 2008) and the associated EA (attached; NMFS 2008a).

2. PURPOSE AND NEED OF SUPPLEMENTAL ANALYSIS

This action proposes to make minor modifications to the existing requirements related to the use chain-mat modified dredge gear in the Atlantic sea scallop fishery. If implemented, this action would: (1) further define where on the dredge the horizontal and vertical chains comprising the chain mat should be hung; (2) exclude the sweep from the requirement that each side of the openings formed by the intersecting chains in the chain mat be 14 inches (35.5 cm) or less; and (3) add a definition of the sweep and the diamonds to the requirements. The sweep and diamonds are terms used to describe parts of the scallop dredge gear (Figure 1).

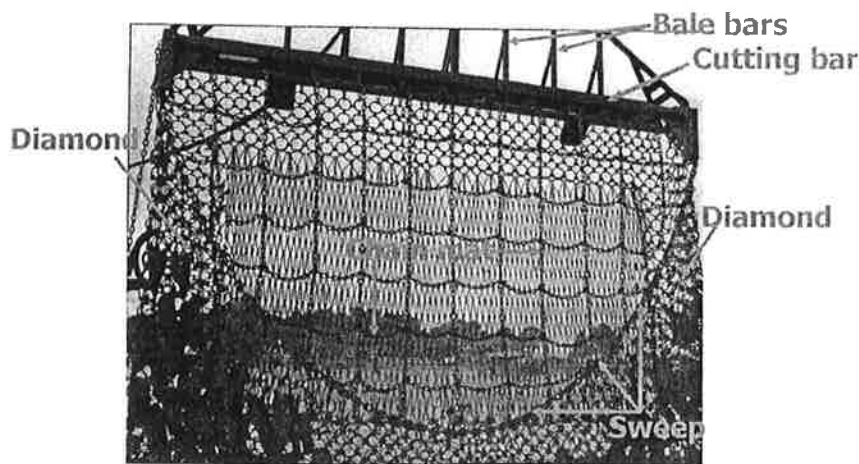


Figure 1: Chain-mat modified Atlantic sea scallop dredge
Photo: Bill DuPaul

The current regulations define a chain mat as "... a device designed to be installed in a scallop dredge forward of the sweep, as described in 50 CFR 223.206, for the purpose of excluding sea turtles from the dredge." The regulations at 50 CFR 223.206 state, in part, that:

During the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that enters waters south of 41°9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal ("tickler") chains and vertical (up-and-down) chains that are configured such that the openings formed by the intersecting chains have no more than 4 sides. The length of each side of the openings formed by the intersecting chains, including the sweep, must be less than or equal to 14 inches (35.5 cm).

While reviewing these existing requirements, NMFS determined that "forward of the sweep" does not fully describe the configuration and that more specificity is necessary. This clarification is necessary to ensure that the gear is configured correctly to provide the protection to sea turtles intended by the existing regulations.

Second, this action proposes to exclude the sweep from the requirement that each side of the openings formed by the intersecting chains be less than or equal to 14 inches. For those openings adjacent to the sweep, the sweep chain will create one side of the opening. Under the current requirements, the length of the side created by the sweep chain must be 14 inches or less. Along the sweep, the openings are irregularly shaped and may be three- or four-sided (Figure 1), generally resulting in a smaller opening than throughout the rest of the chain mat. NMFS has found that, except in rare cases, the size of the openings along the sweep will be smaller (even if the length of the side created by the sweep exceeds 14 inches) than the size of the openings created by a square with 14 inches per side, the maximum opening allowed throughout the chain mat (see Section

5.2.2). Therefore, this action proposes to exclude the sweep from the 14-inch requirement.

Third, this action proposes to define the sweep and the diamonds, which are terms used to describe parts of the dredge gear. These definitions are necessary to ensure that the meaning of these terms within the regulations is understood.

3. DESCRIPTION OF THE ALTERNATIVES

NMFS is considering two alternatives. These alternatives are within the scope of NMFS's authority, are technically feasible, and meet the purpose and need of this action.

3.1. Alternative 1: No Action/Status Quo - Current Regulatory Requirements

The No Action Alternative would leave in place the existing requirements in 50 CFR 223.206 related to the use of chain mat-modified dredge gear in the Atlantic sea scallop fishery. The text highlighted in bold below is the part of the regulations (50 CFR 223.206(d)(11)) that would be changed with the Preferred Alternative:

During the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that enters waters south of 41°9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal ("tickler") chains and vertical (up-and-down) chains that are configured such that the openings formed by the intersecting chains have no more than 4 sides. **The length of each side of the openings formed by the intersecting chains, including the sweep, must be less than or equal to 14 inches (35.5 cm).** The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

Any vessel that enters the waters described above and that is required to have a Federal Atlantic sea scallop fishery permit must have the chain mat configuration installed on all dredges for the duration of the trip. Vessels subject to these requirements transiting waters south of 41° 9.0' N. latitude, from the shoreline to the outer boundary of the EEZ, are exempted from the chain mat requirements provided the dredge gear is stowed and there are no scallops on-board (50 CFR 223.206(d)(11)(ii) and (d)(11)(iii)).

3.2. Alternative 2 (Preferred Alternative) - Modification of the existing chain-mat modified dredge requirements

The Preferred Alternative would make three minor modifications to the existing requirements described under the No Action Alternative. First, this alternative would replace the following text (bolded in the previous section) “The length of each side of the openings formed by the intersecting chains, including the sweep, must be less than or equal to 14 inches (35.5 cm).” to read:

The vertical and horizontal chains must be hung to cover the opening of the dredge bag such that the vertical chains extend from the back of the cutting bar to the sweep. The horizontal chains must intersect the vertical chains such that the length of each side of the openings formed by the intersecting chains is less than or equal to 14 inches (35.5 cm), with the exception of the side of any individual opening created by the sweep.

As described above, this change is necessary to ensure that the gear is configured correctly. Second, this alternative would specifically exclude the sweep from the requirement that each side of the opening be less than or equal to 14 inches.

The two changes described above would be made to 50 CFR 223.206 (d)(11)(i). Specifically, 50 CFR 223.206(d)(11)(i) would be modified to state:

During the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that enters waters south of 41°9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal (“tickler”) chains and vertical (“up-and-down”) chains that are configured such that the openings formed by the intersecting chains have no more than 4 sides. **The vertical and horizontal chains must be hung to cover the opening of the dredge bag such that the vertical chains extend from the back of the cutting bar to the sweep. The horizontal chains must intersect the vertical chains such that the length of each side of the openings formed by the intersecting chains is less than or equal to 14 inches (35.5 cm) with the exception of the side of any individual opening created by the sweep [emphasis added].** The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

No changes would be made to the other subparagraphs in this section (i.e., 50 CFR 223.206(d)(11)(ii) and 50 CFR 223.206(d)(11)(iii)).

Third, this alternative would add definitions of the sweep and the diamonds to the regulations. NMFS is proposing to define the sweep, with respect to dredge or dredge gear as defined in 50 CFR 222.102 as “a chain extending, usually in an arc, from one end of the dredge frame to the other to which the ring bag, including the diamonds, is attached. The sweep forms the edge of the opening of the dredge bag.” As the definition of the sweep references the diamonds, this alternative also proposes a definition of the diamonds. NMFS is proposing to define the diamonds as “the triangular-shaped portions of the ring bag on the dredge bottom as defined in 50 CFR 648.2.” These definitions are necessary as the proposed changes specifically exclude the sweep from the requirement and the term diamonds is used to define the sweep.

4. AFFECTED ENVIRONMENT

The geographic area affected by the alternatives is the area south of 41° 9.0'N latitude from the shoreline to the outer boundary of the EEZ from May 1 through November 30 each year. The attached EA includes a detailed description of the physical, biological, habitat, and socio-economic ecosystem components within the affected environment.

5. ENVIRONMENTAL CONSEQUENCES

A chain mat is a grid of horizontal and vertical chains spaced such that, under the existing regulations, all of the openings are defined by sides that are 14 inches or less in length. This grid of chains extends over the mouth of the dredge bag to prevent sea turtles from entering the dredge bag. By keeping sea turtles out of the dredge bag, the chain mat helps reduce mortality and injury to sea turtles, which are protected under the ESA. NMFS previously evaluated the existing requirements and found that the implementation of those requirements would not significantly impact the quality of the human environment, and that all beneficial and adverse impacts of the action were addressed to reach the conclusion of no significant impacts (NMFS 2008a). This supplement to the EA will evaluate the environmental consequences resulting from the two alternatives described above. This EA does not re-evaluate the existing chain mat requirements.

5.1. No Action Alternative (Alternative 1):

The environmental consequences of the existing chain mat requirements were evaluated in Section 5.0 of the attached EA, including the physical (Section 5.1.1), biological (5.1.2), habitat (5.1.3), economic (5.1.4), and social impacts (5.1.5). The attached analysis concluded that there were no significant impacts from the implementation of the chain mat requirements. As this alternative is the same as the existing requirements, it

would not result in any additional physical, biological, habitat, or socio-economic impacts.

5.2. Preferred Alternative (Alternative 2)

5.2.1. Physical Impacts

The chain-mat modified dredge gear is currently required in the Atlantic sea scallop dredge fishery in the same areas and times as are proposed under this alternative. In addition, the area swept by the gear would be the same under both the existing requirements and under this modified alternative. The modifications under this alternative are minor and would not change the weight or size of the dredge gear. Therefore, there are no additional impacts to the physical environment under this alternative.

5.2.2. Biological Impacts

Under the current requirements, the length of each side of the opening created by the intersecting chains, including the side created by the sweep chain, must be 14 inches or less. However, except in rare cases, the size of the openings along the sweep will be smaller (even if the length of the side created by the sweep exceeds 14 inches) than the size of the openings created by a square with 14 inches per side, the maximum opening allowed throughout the chain mat. Given the configuration of the dredge gear, it is possible that one opening at the bottom of the arc created by the sweep could be greater than the opening created by a square with 14 inches per side if the vertical chains forming the two sides of this opening are at or near 14 inches in length.

This alternative would exclude the sweep from the 14-inch requirement. There are several reasons why this change would result in inconsequential impacts on the conservation benefit of the chain mats. First, the number of openings that may be larger than the opening created by a square with 14 inches per side is limited to a single opening in the chain mat. Second, the increase in size of the one opening is only a small fraction of the size of the openings allowed throughout the chain mat due to the arc in the sweep, and this increase is further limited by the fact that the sweep chain is generally a thicker chain, which would take up some of the space within the opening. Third, this slightly larger opening would only be present on a subset of the dredges used in the fishery and, where present on a dredge, would be limited to only one of the chain mat openings. The subset of dredges that might have a chain mat with one slightly larger opening along the sweep are rigged such that the vertical sides of the opening at the bottom of the arc formed by the sweep are at or very close to the 14-inch maximum. In some cases, fishermen configure the gear such that the sides of the openings created by the intersecting chains are less than 14 inches to allow for chain stretch and wear. In these cases, the opening at the bottom of the arc created by the sweep would likely be smaller than that created by a 14- by 14-inch square, and all of the openings in the chain mat would be consistent with the openings allowed under the current regulations.

Given that the slightly larger opening is limited to one opening in the chain mat used on a subset of the dredges used in the fishery, and that the increase in the size of the opening is small due to the way the gear is configured, the conservation benefit to sea turtles under this alternative is essentially the same as the current requirements/No Action Alternative. Although possible, it is highly unlikely that a sea turtle that would be excluded by a 14- by 14-inch opening would encounter and pass through the one slightly larger opening that may be present on some dredges. This change is also not expected to impact the scallop catch given that, with the exception of one opening on a subset of dredges, the openings under this alternative are the same as the No Action Alternative.

5.2.3. Habitat

As described above, the chain-mat modified dredge gear is currently required in the Atlantic sea scallop dredge fishery in the same areas and times as are proposed under this alternative. In addition, the area swept by the gear would be the same under both the existing requirements and under the modified alternative. Therefore, there are no additional impacts to habitat, including Essential Fish Habitat (EFH), under this alternative. There would be no adverse impact to EFH from the minor modifications proposed here.

5.2.4. Socio-economic impacts

The final rule and Final EA/Final Regulatory Flexibility Act Analysis/Regulatory Impact Review (EA/FRFA/RIR) (NMFS 2008a) implementing the existing chain-mat modified dredge requirements identified 314 vessels that would be affected by those requirements. A description of the fishery and the economic impacts of the original chain mat requirements are contained in the attached EA/FRFA/RIR. The economic impacts resulting from this alternative are described here.

In order to understand the minor economic benefit that might be realized by some fishermen under this Preferred Alternative, it is first necessary to explain some of the costs associated with the current requirements. NMFS has identified two alternate ways to configure the gear to comply with the regulation as currently written. Fishermen could create smaller openings (approximately 9-10 inches per side) throughout the mat to ensure that the side created by the sweep is less than or equal to 14 inches. However, it was never the intention that the requirement result in openings in the chain mat measuring 9-10 inches per a side. The second way fishermen could comply with the current regulations is to add a small piece of chain to any opening where the sweep side measures more than 14 inches. The number of openings that would require modification is expected to be limited to that area along the sweep that is curved. This short piece of chain would divide the sweep, creating two smaller openings. It is expected that these pieces of chain would be no more than 14 inches. In many cases, the added segments are likely to be much less than 14 inches. As described in the attached EA, a 15-ft dredge with frame, bag, and club stick weighs approximately 4500 pounds and the

weight of the chain mat was estimated to be between 67 pounds for a 10-ft dredge and 176 pounds for a 15-ft dredge. In the economic analysis in the attached EA, a conservative estimate of 20% was used for the additional chain required to comply with the 14-inch requirement. Therefore, it is likely that the costs of these additional segments are subsumed in that analysis. However, some additional information on the amount of chain that would be required to divide these openings to comply with the current requirements (i.e., the No Action Alternative) is provided here.

As described above, the short segments that would be added to divide the openings under the current requirements/No Action Alternative would be less than 14 inches per segment and, in many cases, much less than 14 inches. The approximate weight of Grade 70 chain ranges from 0.93 pounds per foot for 5/16" chain to 1.41 pounds per foot for 3/8 inch chain. The EA considered the costs of material to configure the gear. The estimated cost for the chain was \$2.00 to \$3.00 per foot (NMFS 2008a). Given that the additional chain required is only a short segment added to a limited number of openings, the weight, cost, and the efficiency of the gear would not substantially change. The costs associated with adding the additional short segments of chain to comply with the No Action Alternative would be minimal.

Under the Preferred Alternative, the short segments of chain described above would not have to be added to divide the openings where the sweep is longer than 14 inches. The costs described above would no longer be incurred under this Preferred Alternative. Therefore, there might be a small economic benefit to fishermen under this alternative. However, the difference in cost between this alternative and the No Action Alternative is expected to be minimal given that the pieces of chain that would be added under the current requirements are fairly small and inexpensive and would only be added to a small number of openings. In addition, these changes are not expected to substantially impact the weight or efficiency of the gear. As these costs are minimal, this alternative is not expected to affect the profitability of the fishermen.

6. CUMULATIVE IMPACTS OF ALTERNATIVES:

This supplement to the EA analyzes the impacts from the Preferred Alternative that would occur in addition to any cumulative effects that were previously determined in the attached March 2008 EA. That EA served to implement the current regulations, referred to in this supplement as the No Action Alternative. The measures evaluated in the March 2008 EA were not expected to result in substantial direct or indirect impacts to the physical environment, habitat, or fishery resources, and were not expected to contribute to cumulative effects on these ecosystem components. The measures were designed to help protect sea turtles, resulting in benefits to the species. The measures were expected to result in some loss of revenue to the Atlantic sea scallop dredge fishery due to a decrease in catch and the cost of modifying the dredge, but the loss is not expected to be substantial on average, and it was not expected that the additive effects would contribute to or result in substantial cumulative impacts on the human community. The March 2008 EA concluded that the cumulative effects of the action

were not likely to have a substantial impact on any of the ecosystem components associated with the scallop dredge fishery, and that there would be protective benefits for sea turtles without a significant impact on the human community.

The Preferred Alternative evaluated in this supplement to the March 2008 EA also would not contribute to cumulative impacts. Under the Preferred Alternative, there are no additional direct or indirect effects on the physical or habitat ecosystem components. The conservation benefit to sea turtles under this alternative is essentially the same as the current requirements (i.e., the No Action Alternative). In addition, there would only be minimal benefits to the socio-economic environment. This action would not result in any additional costs nor affect the profitability of fishermen. Therefore, the minor modifications under the Preferred Alternative would not result in any cumulative impacts to ecosystem components and would have only minimal cumulative impacts on the human community.

7. APPLICABLE LAWS AND REGULATIONS

7.1. Endangered Species Act

NMFS is reviewing its compliance with Section 7 consultation under the Endangered Species Act in light of the proposed action.

7.2. Marine Mammal Protection Act

Under the Marine Mammal Protection Act (MMPA), Federal responsibility for protecting and conserving marine mammals is vested with the Departments of Commerce (NMFS) and Interior (USFWS). The primary management objective of the MMPA is to maintain the health and stability of the marine ecosystem, with a goal of obtaining an optimum sustainable population of marine mammals within the carrying capacity of the habitat. The MMPA is intended to work in cooperation with the applicable provisions of the ESA. The minor modifications to the requirement to use chain mats on scallop dredges in the Atlantic sea scallop fishery would not adversely affect marine mammals. Interactions between scallop dredge gear and marine mammals are reasonably expected to be unlikely to occur given the size, speed and maneuverability of the species present within the geographic scope of the proposed action in comparison to scallop fishing gear.

7.3. Paperwork Reduction Act

This action includes no new collection of information and further analysis is not required. The proposed action would require no additional reporting burdens by scallop permit holders, dealers, or other entities in the Atlantic sea scallop industry.

7.4. Magnuson-Stevens Fishery Conservation and Management Act, including Essential Fish Habitat

The area affected by the proposed action has been identified as Essential Fish Habitat (EFH) for a variety of species (see Section 4.2.3 in the attached EA). The minor modifications to the existing requirements included in the Preferred Alternative would not result in any additional impacts to EFH. Therefore, these minor modifications would not result in any adverse impacts to EFH.

7.5. Information Quality Act

The Information Quality Act directed the Office of Management and Budget to issue government wide guidelines that “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.” Under the NOAA guidelines, this action is considered a Natural Resource Plan. It is a

composite of several types of information from a variety of sources. Compliance of this document with NOAA guidelines is evaluated below.

Utility: The information disseminated is intended to describe a management action and the impacts of that action. The information is intended to be useful to: 1) industry participants, conservation groups, and other interested parties so they can understand the management action, its effects, and its justification; and 2) managers and policy makers so they can choose an alternative for implementation.

Integrity: Information and data were used in the analysis of impacts associated with this document. This information was necessary to assess the impacts of the alternatives considered as required under the National Environmental Policy Act and Executive Order 12866 for the preparation of a draft supplement to the environmental assessment/regulatory impact review. NMFS complied with all relevant statutory and regulatory requirements as well as NOAA's policy regarding confidentiality of data. Finally, the information to be made available to the public was done so in aggregate, summary, or other such form that does not disclose the identity or business of any person.

Objectivity: The NOAA Information Quality Guidelines standards for Natural Resource Plans state that plans be presented in an accurate, clear, complete, and unbiased manner. NMFS strives to draft and present proposed management measures in a clear and easily understandable manner with detailed descriptions that explain the decision making process and the implications of management measures on marine resources and the public. Although the alternatives considered in this document rely upon scientific information, analyses, and conclusions, clear distinctions are drawn between policy choices and the supporting science. In addition, the scientific information relied upon in the development, drafting, and publication of this supplement to the EA was properly cited, and a list of references was provided. Finally, this document was reviewed by a variety of biologists, policy analysts, and attorneys from NMFS's Northeast Region.

7.6. Administrative Procedure Act

The Federal Administrative Procedure Act (APA) establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of the APA is to ensure public access to the Federal rulemaking process and to give the public notice and an opportunity to comment before the agency promulgates new regulations. NMFS is not requesting a waiver from the requirements of the APA for notice and comment rulemaking.

7.7. Coastal Zone Management Act

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all Federal activities that affect any land or water use or natural resource of the coastal zone be consistent with approved state coastal zone management programs to the maximum

extent practicable. NMFS has determined that this action is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. Letters documenting NMFS's determination, along with the draft supplement to the environmental assessment and proposed rule, were sent to the coastal zone management program offices of these states. A list of the specific state contacts and a copy of the letters are available upon request.

7.8. Executive Order (E.O.) 13132 Federalism

E.O. 13132, otherwise known as the Federalism E.O., was signed by President Clinton on August 4, 1999, and published in the Federal Register on August 10, 1999 (64 FR 43255). This E.O. is intended to guide Federal agencies in the formulation and implementation of "policies that have federal implications." Such policies are regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. E.O. 13132 requires Federal agencies to have a process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. A Federal summary impact statement is also required for rules that have federalism implications. Given the distribution of the sea scallop dredge fishery, the proposed action is not expected to have substantial effects on states or to have federalism implications. The proposed rule would apply to Federal permit holders in the sea scallop fishery, which operates primarily in federal waters.

7.9. Executive Order 12866 Regulatory Planning and Review

7.9.1. Regulatory Impact Review

The objectives of E.O. 12866 (58 FR 51735, October 4, 1993) are: (1) to enhance planning and coordination with respect to both new and existing regulations; (2) to reaffirm the primacy of Federal agencies in the regulatory decision-making process; (3) to restore the integrity and legitimacy of regulatory review and oversight; and (4) to make the process more accessible and open to the public. The Regulatory Impact Review (RIR) is a required component of the process of preparing and reviewing regulatory actions and provides a comprehensive review of the economic impacts associated with a proposed action. The regulatory philosophy of E.O. 12866 stresses that in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives and choose those approaches that maximize the net benefits to the society. The RIR also serves as a basis for determining whether the proposed regulations are a "significant regulatory action" under the criteria provided in E.O. 12866.

The RIR must provide the following information: (1) a description of the management goals and objectives; (2) a description of the fishery and/or other affected entities; (3) a statement of the problem; (4) a description of each selected alternative, including the “no action” alternative; and (5) an economic analysis of the expected effects of each selected alternative relative to the baseline. The RIR is intended to assist NMFS’s decision-making by selecting the regulatory action that maximizes net benefits to the Nation.

Description of Management Goals and Objectives

The purpose and need of this action are set forth in Section 2.0 and are included herein by reference.

Description of the fishery and/or other affected entities

The small entities affected by the chain mat regulations are Atlantic sea scallop fishermen operating south of 41° 9.0’ N latitude from the shoreline to the outer boundary of the Exclusive Economic Zone. The final rule and Final Environmental Assessment/Final Regulatory Flexibility Act Analysis/Regulatory Impact Review (EA/FRFA/RIR) (March 2008) implementing the chain-mat modified dredge requirements identified 314 vessels that would be affected by the final rule (NMFS 2008a). A description of the fishery and affected entities can be found in that EA/FRFA/RIR (attached).

Statement of the Problem

First, this action is necessary to clarify further where on the dredge the chain mat must be hung. The current regulations require that the chain mats be hung forward of the sweep. NMFS would add more specificity to this requirement to ensure that the gear is configured correctly to provide the protection to sea turtles intended from the existing regulations. Second, this rule proposes to exclude the sweep from the requirement that each side of the openings formed by the intersecting chains be less than or equal to 14 inches. For those openings adjacent to the sweep, one side of the opening is created by the sweep chain. Under the current requirements, the length of the side created by the sweep chain must be 14 inches or less. However, NMFS has re-examined this requirement and has found that except in rare cases, the openings along the sweep will be smaller (even if the side created by the sweep exceeds 14 inches) than openings created by a 14- by 14-inch square, the maximum opening allowed throughout the chain mat. Therefore, this action would propose to exclude the sweep from the 14-inch requirement. Third, this action proposes to add to the regulations a definition of the sweep and the diamonds, which are terms used to describe parts of the dredge gear, to the regulations. These definitions are necessary, as the change described above would specifically exclude the sweep from the 14-inch requirement, and the term diamonds is used to describe the sweep.

Description of each selected alternative, including the “no action” alternative; and an economic analysis of the expected effects of each selected alternative relative to the baseline

This assessment considered two alternatives, the No Action Alternative and the Preferred Alternative. These alternatives are described in Section 3.0. This RIR evaluates the implementation of modifications to the requirements for the chain-mat modified dredge in the Atlantic sea scallop fishery. The Preferred Alternative, if adopted, would modify the regulatory text to clarify where on the gear the chain mat must be hung, specifically exclude the sweep from the requirements that each side of the openings created by the horizontal and vertical chains be 14 inches or less, and add definitions of the sweep and the diamonds. The socio-economic impacts of the current requirements were evaluated in the attached EA/FRFA/RIR.

As described in Section 5.2.4, NMFS has identified two alternate ways to configure the gear to comply with the regulation as currently written (i.e., under the No Action Alternative). Fishermen could create smaller openings (approximately 9-10 inches per side) throughout the mat to ensure that the side created by the sweep was less than or equal to 14 inches, or fishermen could add a small piece of chain to any opening where sweep side measures more than 14 inches. As described in Section 5.2.4, the additional chain required under the latter configuration is only a short segment added to a limited number of openings. Therefore, the additional chain would not substantially change the weight, cost, or the efficiency of the gear. The costs associated with adding the additional short segments of chain to comply with the requirement that the sides of the openings created by the sweep be 14 inches or less would be minimal.

Under the Preferred Alternative, the short segments of chain described above would not have to be added to divide the openings where the sweep is longer than 14 inches. Therefore, there might be a minimal economic benefit to fishermen under this alternative. The Preferred Alternative would not result in any additional costs, and given that the benefits are minimal, this Alternative would not affect the profitability of the fishermen. As this action is not expected to result in any additional costs, it will not contribute to cumulative economic costs on the fishery.

As described in Section 5.2.2., the conservation benefit to sea turtles under the Preferred Alternative is essentially the same as the current requirements/No Action Alternative. Although possible, it is highly unlikely that a sea turtle that would be excluded by a 14-by 14-inch opening would encounter and pass through the one slightly larger opening that may be present on some dredge bags. This change is also not expected to impact the scallop catch given that, with the exception of one opening on a subset of dredges, the openings under this alternative are the same as the No Action Alternative.

Determination of Significant Regulatory Action

E.O. 12866 defines a “significant regulatory action” as one that is likely to result in: a) an annual effect on the economy of \$100 million or more, or one which adversely affects

in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health and safety, or state, local, or tribal governments or communities; b) a serious inconsistency or interference with an action taken or planned by another agency; c) a budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; d) novel legal or policy issues arising out of legal mandates, the President's priorities, or the principals set forth in E.O. 12866.

The preceding analysis shows that the Preferred Alternative would not constitute a "significant regulatory action" since it would not raise novel legal or policy issues and would not result in any additional costs or reduce the profitability of the effected entities. Gear modifications are commonly used to reduce the impacts of a fishery on protected species. This action would make only minor modifications to the existing gear modification requirements. Therefore, this action would not raise any novel legal or policy issues. The Preferred Alternative would result in only minimal economic benefits to fishermen. It would not have an annual impact on the economy of \$100 million or more. The Preferred Alternative would not adversely affect in a material way the economy, productivity, competition, public health or safety, jobs or state, local, or tribal governments. It would not interfere with an action planned by another agency nor would it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients.

7.9.2. Regulatory Flexibility Act Analysis

NMFS has recommended that the Chief Counsel for Regulation of the Department of Commerce certify to the Chief Counsel for Advocacy of the Small Business that the Preferred Alternative, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this determination is described above. As a result, an initial regulatory flexibility act analysis is not required and none has been prepared.

7.10. National Environmental Policy Act

7.10.1. Finding of No Significant Impact

Under the Preferred Alternative, NMFS would make minor modifications to the existing requirements to use chain-mat modified dredge gear in the Atlantic sea scallop fishery. The chain mat regulation requires any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that enters waters south of 41° 9.0' N. lat. from the shoreline to the outer boundary of the EEZ, to modify their dredge(s) from May 1 through November 30 each year. If implemented, this Preferred Alternative would: (1) further define where on the dredge the horizontal and vertical chains comprising the chain mat should be hung; (2) exclude the sweep from the requirement that openings in the chain mat be 14 inches

(35.5 cm) or less per side; and (3) add a definition of the sweep and the diamonds to the requirements.

NOAA Administrative Order 216-6 (NAO 216-6; May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

Response: The chain mat modification does not result in a substantial reduction in capture of the target species, the area swept is the same as with an unmodified dredge, and the weight of the modified dredge is not considerably different than that of the unmodified dredge. The proposed action would make only minor modifications to these current requirements, and these modifications would not result in an impact on target species. Therefore, the proposed action would not substantially affect the scallop resource in the geographic area of the action. The clarification as to how the gear is to be hung and the definitions would ensure that the gear is being configured correctly to provide the protection to sea turtles anticipated from the existing regulations, and would not result in any impacts to the target species. Environmental consequences of the alternatives are discussed in section 5.0

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

Response: The Preferred Alternative is not expected to impact any non-target species and would not jeopardize their sustainability. This alternative would make only minor modifications to the existing requirements. Environmental consequences of the alternatives are discussed in section 5.0.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs?

Response: The area impacted by the Preferred Alternative contains EFH and an abundance of life forms of commercial and non-commercial value. The characteristics of this area would not be significantly impacted by this action. The Preferred Alternative is not expected to cause substantial damage to the ocean and coastal habitats or to EFH as defined under the Magnuson-Stevens Fishery Conservation and Management Act and identified in fishery

management plans. In addition, this alternative is not expected to have a substantial impact on biodiversity and ecosystem function within the geographic scope of the action. Environmental consequences of the alternatives are discussed in Section 5.0.

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

Response: Public health and safety is not expected to be affected by the Preferred Alternative. Sea scallop vessels currently use chain mats in certain areas and times. The current use of chain mats does not create a public health and safety concern, and the minor changes implemented under the Preferred Alternative would not result in any public health and safety issues. These modifications do not change the way the gear is fished or used nor would they result in a change in the behavior of the fishermen that would result in an adverse impact to public health and safety.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

Response: The Preferred Alternative would not adversely affect endangered or threatened species, marine mammals, or critical habitat of these species. The chain-mat modified dredge gear is designed to benefit sea turtles by preventing them from entering the dredge bag, and injury and mortality that result from such capture. This gear is currently required in the same areas and times as the Preferred Alternative. The proposed action would make minor modifications to these existing requirements. However, these modifications would only result in inconsequential impacts on the conservation benefits of the chain-mat modified gear. A number of species listed under the ESA and the MMPA are found in the area of the Preferred Alternative, but are not likely to be affected by the chain mat requirements, as described in the attached document, due to their habitat and/or prey preference, seasonal distribution, and/or size, speed, and maneuverability.

The clarification related to configuring the gear correctly and the definitions would not impact any of the species or their habitat found in the geographic area of the alternatives. The environmental consequences are discussed in Section 5.0.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: The Preferred Alternative would not have a substantial impact on biodiversity and/or ecosystem function within the action area. Benthic disturbance from the existing chain mat requirements in the regulated area is

expected to be minimal and temporary. The Preferred Alternative would result in minor modifications to the chain mat requirements. These modifications would not change the dredge frame or the area swept by the dredge. Therefore, there would be no additional impacts from these changes. The clarification related to configuring the gear correctly and the definitions would not impact biodiversity or ecosystem function. Environmental consequences of the alternatives are discussed in Section 5.0.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: Impacts to the human environment, beneficial, adverse, and cumulative, were evaluated in this document and are not significant. There are no significant social or economic impacts. The changes to the gear modifications, as described in this document, are not expected to result in any additional costs and would not impact the profitability of the vessel. While the costs of configuring the gear may be reduced, this reduction is expected to be minimal as the differences between the current requirements and the Preferred Alternative are minor. Environmental consequences of the alternatives are discussed in Section 5.0.

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response: The effects of the Preferred Alternative on the human environment are not likely to be highly controversial. These modifications to the requirements are minor. Given that the fishing industry supports this action and that conservation benefits to sea turtles under the Preferred Alternative are essentially the same as under the current requirements, this action is not likely to be controversial.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

Response: There is no evidence that the implementation of the minor modifications to the current requirements would result in impacts to unique areas. No unique characteristics of the geographic area were identified.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: The degree to which the effects of the Preferred Alternative are highly uncertain or involve unique or unknown risks is small. The Preferred Alternative would make minor modifications to existing requirements. The

impacts of these modifications are not highly uncertain and do not involve unique or unknown risks.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: The minor modifications under the Preferred Alternative are not expected to result in any physical or habitat impacts, and would not contribute to cumulative impacts on these ecosystem components. The biological impacts to protected species (i.e., conservation benefits to sea turtles) are essentially the same under this action and the current requirements. In addition, the Preferred Alternative is not expected to impact any target or non-target species. Therefore, the Preferred Alternative would not contribute to cumulative impacts on biological ecosystem components. The Preferred Alternative also would not result in additional costs to fishermen nor would it impact their profitability. Therefore, it would not contribute to cumulative socio-economic impacts. Cumulative impacts on the ecosystem components in the geographic area of the Preferred Alternative are addressed in Section 6.0.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: There is no evidence that the implementation of the Preferred Alternative would adversely affect entities listed in or eligible for listing in the National Register of Historic Places or would cause loss or destruction of significant scientific, cultural, or historic resources.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

Response: The implementation of the Preferred Alternative would not result in any actions that would be expected to result in the introduction or spread of a nonindigenous species.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: The implementation of gear modifications to reduce the risk of capture of sea turtles is a commonly used management tool and, as such, does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. This action would make minor modifications to the existing chain mat requirements. This is an independent action being implemented to achieve a specific objective given area-specific conditions and issues and is therefore not expected to establish a precedent for future actions.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: There is no evidence that chain mat requirements would result in violation of a federal, state, or local law for environmental protection. In fact, the chain mat modification would be expected to support federal, state, and local laws for environmental protection.

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: As described in Section 5.0, the Preferred Alternative is not expected to affect the scallop resource (the target species) as the weight of the modified dredge is not considerably different from that of the dredge currently used and the area swept is the same. As such, there are no direct or indirect impact of the gear modification on the scallop resource that, when considered with other past, present or reasonably foreseeable future actions, would result in cumulative adverse impacts. The Preferred Alternative would also not affect non-target species as vessels would continue to fish in the same time and areas as they currently fish. The Preferred Alternative would make only minor modifications to the existing requirements

In view of the information presented in this FONSI and the analysis contained in the supporting supplement to the March 2008 EA prepared for "Sea Turtle Conservation Measures in the Atlantic Sea Scallop Dredge Fishery", it is hereby determined that the implementation of the Preferred Alternative, as described in Section 3.2 of the supplement to the EA, would not significantly impact the quality of the human environment. In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, the preparation of an Environmental Impact Statement for this proposed action is unnecessary.

Patricia A. Kurkul
Northeast Regional Administrator
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Date

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